Supreme Court, U.S.
FILED

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No. _____

IN THE

Supreme Court of the United States

John R. Schultz
Petitioner

v.

Journal Sentinel, Inc.

On Petition For Writ of Certiorari
To The Wisconsin Supreme Court

WRIT OF CERTIORIARI

John R. Schultz
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7 1 pp

QUESTIONS PRESENTED

Whether it is a violation of Article I § 10 cl. 1 of the United States Constitution for a State to enact a law impairing a contractual obligation specifically authorized by another state law.

Whether it is a violation of the takings clause of the Fifth Amendment for a state law to take an individual's statutory entitlement to enter into a contract classifying his wages as his individual property.

Whether the garnishment of a spouse's pay check, without judgment against that spouse, violates due process.

Whether the garnishment of a spouse's pay check for a tort judgment against the other spouse violates the takings clause of the Fifth Amendment by impairing the garnished spouse's ability to get a loan, creates a negative stigma with his co-workers and employer and negatively impacts his credit rating.

Whether the Journal's special status violates the Equal Protection Clause.

Whether the appellate court's distortion of the record and the arguments on appeal constituted a wilful violation of Mr. Schultz's, the Animal Lobby's and Ms. Schultz's due process rights?

PARTIES TO THE PROCEEDING

John R. Schultz is the Petitioner.

The Journal Sentinel, Inc. is the Respondent.

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PETITION FOR WRIT OF CERTIORARI

The petitioner, John R. Schultz, respectfully prays that a writ of certiorari issue to review the decision of the Wisconsin Court of Appeals, District 4, dated October 4, 2001 (published) and the denial of the Petition for Review thereof by the Wisconsin Supreme Court dated January 29, 2002.

OPINIONS BELOW

The decision of the Wisconsin Supreme Court dates January 29, 2002 denying the Petition for Review is reprinted at Pet: 1-2 of the Appendix to this Petition. The opinion of the Wisconsin Court of Appeals, District 4 dated October 4, 2001 is reprinted at Pet:3-9 of the Appendix to the Petition.

JURISDICTION

The Wisconsin Supreme Court on January 29, 2002 issued its Order denying the Petition for Review and thereby affirming the decision of the Wisconsin Court of Appeals, District 4 entered on October 4, 2001. The jurisdiction of the United States Supreme Court to review the decision of the Wisconsin Supreme Court is found at 28 U.S.C. § 1257 (a).

TABLE OF AUTHORITIES

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§766.56 Wis. Stat.....5,7,13, A32

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§766.70 Wis. Stat.....7,A52

§803.045 Wis. Stat.....8, 9, 10, 17, A31

§766.31 Wis. Stat.....2,11,A16

CONSTITUTIONAL PROVISIONS AT ISSUE

Section One of the Fourteenth Amendment provides, in relevant part: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The Fifth Amendment provides, in relevant part: "No person shall be....deprived of life, liberty, or property, without due process of law...."

Article I § 10 cl. 1 of the United States Constitution provides, in relevant part: "No state shall...pass...any law impairing the obligation of contracts...

STATEMENT OF THE CASE

This is a companion case to Cynthia A. Schultz v. Charles J. Sykes, Journal Broadcast Group, Inc. and Journal Sentinel, Inc.

On March 24, 1997, Mr. and Ms. Schultz entered into a Marital Property Contract, pursuant to §766.589 Wis. Stat. [A11] The contract classified Mr. Schultz's wages as property belonging exclusively to him.[1]

On January 28, 1998, ten months after Mr. and Ms. Schultz entered into the marital property contract, Ms. Schultz and the Animal Lobby, Inc. filed a defamation suit against Charles Sykes, Journal Broadcast Group and the Journal Sentinel, Inc. Mr. Schultz was not a party to the action and had no standing to participate in the case.

Before the defamation action was scheduled to go to a jury, the Journal accused Ms. Schultz of attempting to suborn perjury. The trial court, under his "inherent powers" conducted a criminal proceeding to determine if Ms. Schultz was guilty of attempting to suborn perjury and on whether to dismiss her defamation case as punishment. On January 21, 2000, the trial court found Ms. Schultz guilty of attempted subornation of perjury and punished her by dismissing the defamation case.

The Journal served as the prosecutors in the criminal proceeding and, at the close of proceeding, asked for their attorney fees for prosecuting Ms. Schultz, for prosecuting their motion to get their fees for prosecuting Ms. Schultz and for collecting their anticipated judgment.

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[1] §766.31(1) [A16] provides that all property of spouses is marital property except that which is classified otherwise by this chapter. §766.31(10)[A16] Stat. provides that Spouses may reclassify their property by a Marital Property Agreement.

Ms. Schultz notified the Journal and Sykes of the Marital Property Contract, between her and Mr. John Schultz, on February 15, 2000. [2]

On March 10, 2000, the trial court, after concluding that his finding of attempted subornation of perjury did not harm or prejudice the Journal or the defamation case, invoked his "inherent powers" to give the Journal a $168,944.97 judgment against Ms. Schultz and the Animal Lobby, Inc. to "penalize" Ms. Schultz, to "maintain [the court's] integrity" and to reward the Journal for their success in convincing the court to dismiss an unprejudiced case to vindicate his "dignity." The trial court's delectation with the result was evident when he bragged:

> "The result obtained from the defendants point of view couldn't have been a better result. They got the case dismissed without a trial. It doesn't get much better than that from the defendants point of view. That is a fact that would have to weight heavily also in consideration of the fee charged. This was an excellent result from the defendants point of view. They did not have to risk going in front of a jury and defending themselves to a jury on this case. [R.212:102-03].

The trial court also permitted the Journal to be reimbursed for numerous miscellaneous items such as $2772.50 for making the following settlement offer to Ms. Schultz;

> "We are guardedly optimistic due to the tangled web comment (of Judge Wasielewski). We have a copy of that transcript. We will get a release of all claims and they will not be

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[2] §766.01(13) Stat. [A19] provides that a person has "notice" of a fact if the person has knowledge of it, receives a notificationof it, or has reason to know that it exists from the facts and circumstances known to the person.

> confidential. Neither party will admit liability. And we will print a correction to the dog killing article. Ms. Schultz will also give us a judgment against her in the amount of $175,000.00." [272]

The bulk of the Journal's prosecution expenses were generated by their prosecution of Ms. Schultz for an alleged attempt to suborn perjury in a 1996 criminal dognapping case and the trial court reasoned that, if Ms. Schultz would have pled guilty to that subornation of perjury, the judgment would have been much less. Judge Wasielewski said:

> "Going on the basis of her testimony at the hearing, her testimony at the hearing was defiant. She said no. She denied it defiantly. She said her documents 15, 16 and 17 were merely her recording of answers given to her by Mr. Engel in response to questions that she asked.[3] She denied that this was any kind of a script for perjured testimony. So in the face of that, your analogy, sure are there cheaper ways to do things? Yes if you have got an adversary who admits what it is you are trying to prove. It is always easier to come in on a stipulation and get an order. You are implying that the plaintiff is willing to stipulate to this, but I don't see that willingness evidenced anywhere in this record." [210:42]

Aside from the above trial court admission signifying a gross violation of Ms. Schultz's due process rights, it demonstrates that the judgment, for which Mr. Schultz is being garnished, was not calibrated to damages but was calibrated to Ms. Schultz's refusal to succumb to unbridled judicial intimidation.

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[3]These were notes that were for Ms. Schultz's attorneys in a two year old criminal dognapping case.

Ms. court also invoked his "inherent powers" to punish Ms. Schultz and the Animal Lobby, Inc. for challenging his decisions in an appeal and ordered them to pay the Journal fees for "as long as this issue is alive, until there is a final judgment entered from which no appeal is taken." Ms. Schultz and the Animal Lobby, Inc. did exercise their statutory right to appeal. Therefore, the judgment, which has now accumulated interest and is over $200,000.00, could easily be well over $500,000.00 when the amount of the additional sanction is decided by the trial court as ordered by the appellate court in the companion case.

On July 24, 2000, the Journal Sentinel, Inc. served the Wisconsin Housing and Economic Development Authority with a garnishment of Mr. Schultz's wages. Mr. Schultz objected on the grounds that he was not a party to the underlying litigation that resulted in the $168,944.97 fine against Ms. Schultz and the Animal Lobby, Inc., that the Journal Sentinel were not creditors under §766.01(2r)(a), [A19] that the Journal Sentinel had no judgment against him and that he had a Marital Property Contract classifying his wages as belonging exclusively to him. Mr. Schultz contended that, because the Journal Sentinel were not creditors[4] as defined in Wisconsin's Marital Property Act, they were not entitled to receive notice of Mr. Schultz's marital property agreement classifying his wages as belonging exclusively to him and that, nonetheless, the Journal Sentinel, Inc. did receive notice of the Marital Property Contract prior to their obligation, against Ms. Schultz and the Animal Lobby, Inc., being incurred.

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[4]§766.01(2r)(a) [A19]describes "creditor" as a person that regularly extends credit. §766.01(2m)(a) [A19] describes "credit" as the right granted by a creditor to defer payment of a debt, incur debt and defer its payment or purchase property or services and defer payment for the property of services. §[A19] (2r)(c), however, says that the definition of a "creditor" in §766.01(2r)(a) [A19] does not apply to §766.55(3) to (4m),[A24] §766.56 (2) (c)[A32] and (d) or §766.61(4) [A38].

The Journal Sentinel objected to Mr. Schultz's objection to the garnishment saying that §766.55 (4m) [A24] "makes it virtually impossible for spouses to limit in advance the rights of involuntary creditors (such as tort judgment creditors or governmental entities imposing fines or penalties) to reach all property that would have been classified as marital property absent the agreement, since ordinarily such creditors will have no actual knowledge of the terms of the marriage agreement. 2 State Bar of Wisconsin, Marital Property Law in Wisconsin §7.11b(3) at page 7-15."

On August 21, 2000, the trial court conducted a hearing at which time the Journal argued that 100% of Mr. Schultz's wages should be available for garnishment because the judgment was not the result of "injury to another person" but was the result of a sanction where "the court was in a sense the victim." The Journal further argued:

> "This was a penalty or a fine. Really a sanction. And that's how Judge Wasielewski described it. He assessed the fees as a sanction to reflect what he saw was misconduct before the court. So for that reason I don't feel that it fell into an action as a tort, you know, it was a misconduct before the court." [R. 27:45]

Judge Dugan, the new judge on the case, paralleled the judgment to a criminal fine:

> "The only thing that I would possibly find controlling is if there was some case law saying that in a situation where someone committed a crime, and there was either an award of restitution or there was a fine itself, and the governmental body in that case for the fine would be attempting to collect the fine, and could you collect against the entire marital estate, or would it only be the interest of, the

> criminal's interest in that case, in the marital estate." [R:27:53]

Ultimately, the trial court concluded that §766.55 (4m) Wis. Stat. [A24] made the Journal Sentinel a "creditor" and that, because they were creditors, §766.55 (4m) [A24] required that they be provided with a copy of the Schultz marital property contract or decree prior to the Motion to Dismiss being filed in the defamation case.[5]

The court then relied on §766.55(2)(c)2(cm) [A24] when it concluded that the obligation incurred by Ms. Schultz and the Animal Lobby, Inc. could be satisfied only from the property of Ms. Schultz and her interest in marital property. The court found that "based on the legislative history of the Act that a marital property agreement...cannot effectively prevent the defendants in this case from recovering or satisfying the obligation of Miss Schultz's interest in the marital estate."

The court also found that, although the Marital Property Contract was provided to the Journal Sentinel before judgment was awarded, it was not provided before September of 1999 when the Journal and Sykes filed their Motion to Dismiss in the defamation case and, therefore, was not valid to the Journal Sentinel, Inc. [27:56] Thus, the trial court permitted the

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[5]§766.55(4m) [A24] provides that: Except as provided under s. 766.56(2)(c) [A32]no provision of a marital property agreement or of a decree under §766.70 [A52] adversely affects the interest of a creditor unless the creditor had actual knowledge of that provision when the obligation to the creditor was incurred or, in the case of an open-end plan, as defined under s. 766.55(1)(a), [A24] when the plan was entered into. If a creditor obtains actual knowledge of a provision of a marital property agreement or decree after an obligation is incurred or an open-end plan is entered into, the provision does not adversely affect the interest of the creditor with respect to that obligation or plan, including any renewal, extension, modification or use of the obligation or plan. The effect of this subsection may not be varied by a marital property agreement or a decree. This subsection does not affect the application

garnishment of what he concluded was Ms. Schultz's interest in Mr. Schultz's wages[6] relying also on §803.045(3) Wis. Stat.[A31][7]

Mr. Schultz immediately exercised his statutory right to appeal and appealed on the grounds that §766.55 (4m) Stat. [A24] is unconstitutional in that it impairs the obligation of his marital property contract; that the taking of his wages to pay an excessive fine that resulted from an unfair and unconstitutional proceeding in which he had no standing to participate and of which he was not notified, violated his fifth amendment due process rights; that §803.045(3) Wis. Stat. [A31] was unconstitutional because it permitted garnishment without judgment; and that it was a violation of his due process rights to garnish his wages to pay the portion of the fine that was to punish the Animal Lobby, Inc. for their criminal conduct,[8] and that the garnishment violated his constitutional rights by punishing him for a crime that he did not commit.

The court of appeals refused to address Mr. Schultz's argument that §766.55 (4m) Stat. [A24] and §803.045(3) Wis. Stat. [A31] were unconstitutional because they authorized the impairment of his of his marital property contract in violation of Article I § 10 cl. 1 of the United States Constitution and because they authorized the taking of his statutory right to enter into the contract classifying his wages as belonging exclusively to him. Furthermore, the court refused to address

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[6]Mr. Schultz's wages are continuing to be garnished every pay period.

[7]" After obtaining a judgment, a creditor may proceed against either or both spouses to reach marital property available for satisfaction of the judgment."

[8]The fact that the trial court, in companion case, did not determine liability and made the Animal Lobby, Inc. and Ms. Schultz "jointly and severally" liable was, in itself, a violation of due process.

Mr. Schultz's contentions that the garnishment, in addition to taking what the court found was Ms. Schultz's interest in his property, took he individual property by destroying his credit rating, preventing him from obtaining credit, causing an increase in his interest rates and by lowering him in the eyes of his co-workers and employer. [9]

In sum, consistent with their patently dishonest approach to its analysis of this case and the companion case, the court of appeals brushed off Mr. Schultz's constitutional arguments by pretending that he didn't make them and then by saying that he could not prove that the challenged statues were unconstitutional "beyond a reasonable doubt."

Mr. Schultz petitioned for review with the Wisconsin Supreme Court on the basis that the court of appeals erred by:

1. Failing to consider whether §766.55(4m),[A24] §766.01(2r)9c) [A19] and § 803.045(3) [A31] violate Article 1, §12 of the Wisconsin Constitution and Article I §10 c. 1 of the United States Constitution;

2. concluding that Mr. Schultz could notchallenge the constitutionality of the underlying proceeding and;

3. by ignoring Mr. Schultz' argument that his constitutional rights were violated when he was punished for a crime, that he did not commit, by having his individual credit rating destroyed, his reputation damaged and his ability to obtain credit impaired.

The Wisconsin Supreme Court gave the court of appeals an additional 30 days to review Mr. Schultz's petition for review for the purpose of reconsidering their opinion. The appellate court did not reconsider and the Wisconsin Supreme Court

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[9]While the court of appeal's opinion said that they did not consider Mr. Schultz's constitutional claims because Mr. Schultz did not indicate "how those provisions applied to the situation," Mr. Schultz not only clearly indicated how the constitutional provisions applied to the situation but, even if the court of appeals missed portions of Mr. Schultz's entire argument, it is evident how these clauses applied to the situation.

denied review with Justice Prosser dissenting.

REASONS FOR GRANTING THIS WRIT

I. The published opinion authorizes a violation to Article I, § 10 cl. 1 of the United States Constitution.

§766.58 Stats. [A11] and Article 1, §12 of the Wisconsin Constitution authorized and entitled Mr. and Ms. Schultz to enter into the marital property contract, as they did, that legally entitled Mr. Schultz to his earnings and accumulations resulting from his personal services, skill, efforts and work, together with all property acquired or income derived therefrom. *§766.58 Stats.* [A11] and Article 1, §12 of the Wisconsin Constitution also authorized and entitled Mr. and Ms. Schultz to stipulate, as they did, that Mr. and Ms. Schultz's wages "shall be the separate property of the party to whom the earnings and income are attributable."

Article I § 10 cl. 1 of the United States Constitution provides that "no State shall...pass any...Law impairing the Obligation of Contracts."

§766.55(4m) [A24] and §766.01(2r)(c) [A19] and §803.045(3) [A31] obviously impair the obligations of marital property contracts by making it impossible for a spouse to own his or her own wages *ever.*

The appeals court recognized that "satisfying the notice requirement with regard to involuntary creditors is no easy task." That is like saying the elephant man had a little puffiness around the eyes. Not only is it not an easy task, it is *impossible* and that impossibility makes the above indicated statutes unconstitutional.

What the appeals court opinion, in the instant case, effectively does is take away the statutory and state constitutional rights

authorizing married persons to reclassify their property in marital property contracts. In *Logan v. Zimmerman Brush Company, 455 U.S. 422 (1982)*, the Supreme Court held that "The hallmark of property is an individual entitlement grounded in state law...". "The Fourteenth Amendment's protection of property has been read broadly to extend protection to 'any significant property interest' including statutory entitlements.

Furthermore, §766.97(2) authorizes a spouse to "institute and defend civil actions in his or her name." §766.31(7)(d) [A16]classifies all property acquired through a judgment or an order of the court as *"individual property."* Thus, Ms. Schultz and the Animal Lobby, Inc. individually owned their property interests in the underlying action. Mr. Schultz had no interest in the underlying action and Wisconsin marital property law did not drag him into the litigation. If Mr. Schultz could not own part of the action, he was never required to give the Journal his marital property contract in the first place because the action, and anything that came from that action, belonged exclusively to Ms. Schultz.

Mr. Schultz adequately briefed this issue in his brief to the Wisconsin court of appeals and they should have addressed it because their cavalier approach to this constitutional issue has serious consequences that impact the rights of every individual who gets married in reliance of the Wisconsin laws that say they are entitled maintain their individual property with a marital property contract

II. The Published Opinion Authorizes a Violation To the Takings Clause of the Fifth Amendment.

While the court of appeals addressed how the garnishment affected what it deemed was Ms. Schultz's 50% of Mr. Schultz's wages, it ignored the property that the garnishment took from Mr. Schultz.

The United States Supreme Court has never held that only the

extreme deprivation of complete and physical deprivation of property triggers due process concerns *Buchanan v. Warley, 245 U.S. 60(1917)*.

In the appeals court, Mr. Schultz argued that the garnishment punished him for a crime that he did not commit when, along with the 50% of Mr. Schultz's wages that the court found belonged to Ms. Schultz, it took his individual credit rating, his chance at obtaining a loan and his reputation by lessening him in the eyes of his employer and co-workers. Furthermore, the Journal Sentinel compounded the taking by prominently publicizing, in their newspaper, that they were garnishing Mr. Schultz's wages.

In *Connecticut v. Doehr, 501 U.S.1(1991),* Brian Doehr sued John F. DiGiovanni and the State of Connecticut when DiGiovanni, acting under a Connecticut statute, put a lien on Doehr's real estate without obtaining a judgment in a tort action. The Supreme Court concluded that DiGiovanni and the State of Connecticut violated Mr. Doehr's 14th amendment due process rights, not because DiGiovanni took Doehr's real estate but because the lien on Doehr's real estate clouded the title, tainted Doehr's credit rating and, among other things, reduced the ability of Doehr to get a loan. In *Doehr at 11-12*, the Supreme Court found that these effects "are sufficient to merit due process protection." See, e.g., *Peeralta v. Heights Medical Center, Inc., 485 U.S. 80, 85, 108 S.Ct.*

There is no difference between the deprivations that Brian Doehr suffered and the deprivations that John Schultz is suffering with the exception that Mr. Schultz's garnishment was publicized in the largest newspaper in the State of Wisconsin for all of his friends, relatives, employees and creditors to see.

III. The Published Opinion Authorizes A Violation of Due Process By Permitting A Garnishment Without Judgment.

The appeals court refused to consider John Schultz's challenge to the validity and the constitutionality of the excessiveness of the judgment saying that he should have asserted those claims in the underlying suit and "not here" and that his assertion of those claims in the court of appeals constituted an impermissible collateral attack.

That's precisely the point, now isn't it? Mr. Schultz had no standing to raise any claims in the underlying suit. Thus, he had no notice at all much less any notice of the magnitude of the punishment that was going to be imposed on Ms. Schultz.

"An elementary and fundamental requirement of due process in any proceeding to which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprize interested parties of the pendency of the action and afford them an opportunity to present their objections" *Mulane v. Central Hanover Bank & Trust Co. et al., 339 U.S. 306, 314 (1950) (citations omitted).* If the Journal wanted to drag Mr. Schultz's pay check into the litigation, they should have notified him of the proceedings that resulted in the judgment.

Furthermore, beginning with *Sniadach v. Family Finance Corp., 395 U.S. 337 (1969)*, the United States Supreme Court has consistently held that constitutional requirements of due process apply to garnishment and prejudgment attachment procedures whenever officers of the State act jointly with a creditor in securing the property in dispute. In *Sniadach at 343-344*, Justice Harlan, in his concurring opinion wrote: "Apart from special situations, some of which are referred to in this Court's opinion, see ante at 1821, I think that due process is afforded only by the kinds of 'notice' and 'hearing' which are aimed at establishing the validity, or at least the probable validity, of the underlying claim against the alleged debtor before he can be deprived of his property or its unrestricted use. I think that is the thrust of the past cases in this Court."

The court of appeals made the absurd finding that the Journal, who they concluded fit the legal definition of "creditor,"

could not do what "creditors" are required to do, under §766.56(3)(b) Wis. Stat., [A32] which was to provide notice to Mr. Schultz of their intent to extend credit to Ms. Schultz. The court reasoned that the Journal was not required to give Mr. Schultz the opportunity to produce his marital property contract by notifying him of their intent file a motion to dismiss because the Journal had "no opportunity to decide whether it would extend credit to Cynthia when she attempted to suborn perjury." The appellate court acts as if the Journal was pulled, kicking and screaming, into defending themselves against an onslaught of perjury damage caused by Ms. Schultz. That is not what the record reflects and is not what happened in the companion case. In fact, the Journal made a choice to permit Engel to give his testimony about subornation of perjury to the civil defamation jury and, instead, to embark on elaborate fact finding on matters that were immaterial to the civil defamation case. A Journal lawyer testified:

> HUSTON: In the respect that we had attempted to win summary judgment and in this case had not succeeded as to two of the claims. There was a risk that those claims would go to a jury. Defamation lawyers don't like juries. There is a risk that messages will have been misquoted in the newspaper five years ago or something of that sort. It is the pattern nationwide that many defamation cases that go to juries wind up with large verdicts, most of which are reversed on appeal, but we didn't want to go that way. When Mr. Engel came forward with his report that Ms. Schultz had attempted to suborn his perjury, it presented us with a good opportunity to avoid a jury so it was very important. [210:24-25]

As the court of appeals recognized, in their opinion in the companion case to this garnishment action:

> "It would have been much easier" to "allow the

> jury to sort everything out, and perhaps refer the Journal's allegations to the district attorney's office."

Therefore, the Journal as a "creditor" who "extends credit," did have an opportunity to notify Mr. Schultz of their intent to extend credit to Ms. Schultz and the Animal Lobby, Inc. by running up $168,000.00 in legal fees to prosecute Ms. Schultz for attempted subornation of perjury. By the court of appeals saying in one breath that the Journal fits the legal definition of "creditor" and in the next breath that the Journal doesn't have to comply with the law requiring creditors to give notice to spouses to give them an opportunity to present their marital property contracts, they imparted a special status on to the Journal over and above the special status it already enjoys as being the most powerful news organization in Wisconsin who provides valuable free pre-election advertising to judicial candidates. That is a violation of Mr. Schultz's due process rights under the Equal Protection Clause.

Perhaps the above was merely dicta from a court anxious to impress the Journal. However, one wonders if the court of appeals will be quite as smug when the next case, relying on the published opinion in this case, is the case of a Judge's paycheck being garnished to pay an involuntary judgment against his or her spouse.

IV. The Appellate Opinion Is A Case of First Impression and Is Bad Law.

There has never been a case decided where a husband and wife have entered into a marital property agreement that was authorized by state law and breached by another state law. In Wisconsin, the marital property contracts are so integral to the entire Wisconsin Marital Property scheme that they are laid out in the statutes as a form for married individuals to follow. The language in Mr. and Ms. Schultz's marital property contract is the language taken directly from the 1996 Wisconsin state statutes. It shocks the conscience of

reasonable people to think that these contracts, laid out in the Wisconsin statutes, are impaired by another patently unconstitutional statute.

V. It Is A Violation Of Mr. Schultz's Fifth Amendment Rights To Take His Pay To Pay The Animal Lobby, Inc.'s Portion Of The Judgment.

There are two judgment debtors on the judgment for which Mr. Schultz's pay checks are being taken to pay. Obviously, no portion of Mr. Schultz's pay check can be garnished to cover the portion of the judgment belonging to the Animal Lobby, Inc. because not even Ms. Schultz's individual property can be taken to satisfy that portion of the liability.

Thus, by the trial court not establishing what portion of the judgment belongs to Ms. Schultz and what portion of the judgment belongs to the Animal Lobby, Inc., it violates Mr. Schultz's 5th Amendment rights to take his pay check to pay the judgment that partially belongs to a corporation who could only get money from Ms. Schultz by litigating against her.

VI. This Case Affords This Court The Opportunity To Put Integrity And Accountability Into a State Judicial System That Has Gone Astray.

The appellate opinions, in this case and in the companion defamation case, constituted appalling violations of Mr. Schultz's due process rights and are disgraceful representations of justice. The appellate court, in both of these cases, willfully misrepresented the facts of the case and deliberately distorted the appellants' arguments whenever the facts and the arguments mandated reversal. Mr. Schultz addressed these gross violations of his due process rights in his Motion for Sanctions to the Wisconsin Supreme Court and Ms. Schultz addressed these due process violations in her Motion

to reconsideration.[10] Only Justice Prosser had the courage to dissent from the court's decision to sweep the problem under the rug by denying review of the motions.

This Court has an opportunity to do a real service for Wisconsin by sending a message to Wisconsin's courts that replacing the rule of law with arrogant, unbridled power and dishonesty will not be tolerated when the constitutional rights of individuals are at stake.

CONCLUSION

For all the foregoing reasons, the petitioner, Mr. Schultz, petitions the supreme court to consider whether **§766.55(4m)** [A24] **and §766.01(2r)(c)** [A19] **and §803.045(3)** [A31] are unconstitutional and whether they violated Mr. Schultz's constitutional rights by impairing the obligations of his marital property contract, by taking his statutory right to own his own paycheck by virtue of his marital property contract and by permitting a garnishment of his wages.

Dated at Mequon, Wis. this 26th day of April, 2002.

Respectfully submitted,

John R. Schultz, *acting pro se*

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[10]Both documents are contained at Pet:316 and at Pet:437 of the companion Petition for Review.

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January 29, 2002

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John R. Schultz
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You are hereby notified that the Court has entered the following order:

00-2595 Matter of Schultz: The Journal Sentinel v. Schultz L.C. #98CV724

A petition for review pursuant to Wis. Stat. § 808.10 and a motion for sanctions having been filed on behalf of debtor-appellant-petitioner, John R. Schultz, husband of Cynthia A. Schultz, and a motion to strike having been filed on behalf of creditor-respondent, The Journal Sentinel, Inc., et al., and considered by this court;

IT IS ORDERED that the motions and the petition for review are denied, with $50 costs awarded to credit-respondent, The Journal Sentinel, Inc., et al.

Prosser, J., dissents.

Crooks and Sykes, J.J., do not participate

Cornelia G. Clark
Clerk of Supreme Court

638 N.W.2d 76
248 Wis.2d 791, 2001 WI app 260
No. 00-259500-2595
STATE OF WISCONSIN IN COURT OF APPEALS
DISTRICT I

In re the Matter of Cynthia A. Schultz and the Animal Lobby, Inc., Plaintiffs, v. Charles S. Sykes, Journal Broadcast Group, Inc. and Journal Sentinel, Inc., Defendants:
The Journal Sentinel, Inc.
Creditor-Respondent,
v.
John R. Schultz, husband of Cynthia A. Schultz,
Debtor-Appellant,
Wisconsin Housing and Economic Development Authority,
Garnishee.

APPEAL from an order of the circuit court for Milwaukee County: TIMOTHY G. DUGAN, Judge. Affirmed.

Before Vergeront, P.J., Dykman and Lundsten, JJ.

¶1. DYKMAN, J. John R. Schultz appeals from an order of the circuit court concluding that fifty percent of his wages are subject to garnishment to satisfy a judgment held by Charles J. Sykes, Journal Broadcast Group, Inc., and Journal Sentinel, Inc., against his wife, Cynthia Schultz. John argues that his wages should be exempt from garnishment because he and his wife have a marital property agreement that classifies his wages as individual property. Alternatively, John asserts that the garnishment violates several of his constitutional rights. We conclude that John and Cynthia's marital property agreement is not binding on the Journal because it had no notice of the agreement, and that John's constitutional rights were not violated. We therefore affirm.

I. Background

¶2. The underlying case supporting this garnishment action began as a claim for defamation by John Schultz's wife, Cynthia Schultz, and The Animal Lobby, Inc., against Charles J. Sykes, Journal Broadcast Group, Inc., and Journal Sentinel, Inc. The circuit court dismissed their claims as a sanction, however, after finding that Cynthia had attempted to suborn perjury from a witness. As an additional sanction, the circuit court awarded costs and attorney fees of $168,944.97 incurred by the defendants in prosecuting their motion to dismiss. We affirmed the circuit court's judgment as it pertained to Cynthia. See Schultz v. Sykes, No. 00-0915 (Wis. Ct. App. October 4, 2001).

¶3. Because Cynthia had no assets, the Journal Sentinel began wage garnishment proceedings against Cynthia's husband, John, to satisfy the judgment. In his answer to the garnishment notice, John responded that his wages were exempt from garnishment because the Journal's judgment was against Cynthia, not him, and that he and Cynthia had a marital property agreement classifying all of John's income as his individual property. After a hearing, the circuit court concluded that the judgment against Cynthia constituted a tort obligation under Wis. Stat. § 766.55(2)(cm) (1999-2000)[11] and that John and Cynthia's marital property agreement did not affect the Journal's right to use Cynthia's interest in the marital property to satisfy its judgment against Cynthia. Accordingly, the circuit court ordered that fifty percent of John's wages were subject to garnishment by the Journal. John appeals.

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[11]Wisconsin Stat. § 766.55(2)(cm) provides: "An obligation incurred by a spouse during marriage, resulting from a tort committed by the spouse during marriage, may be satisfied from the property of that spouse that is not marital property and from that spouse's interest in marital property." All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

II. Analysis

A. Statutory Authority to Proceed Against John Schultz

¶4. The first issue we must decide is whether and to what extent John's wages are properly subject to garnishment under the Wisconsin Statutes. Statutory interpretation is an issue of law that we review de novo. State v. Szulczewski, 216 Wis. 2d 494, 499, 574 N.W.2d 660 (1998). John argues that his wages cannot be garnished for Cynthia's misconduct because he was not a party to the original action. However, under Wis. Stat. § 766.55(2), marital property may be used to satisfy a spouse's obligation to a third party.[12] Wis. Stat. § 803.045(3), in turn, provides that creditors are entitled, after obtaining a judgment against the debt incurring spouse, to proceed against the non-incurring spouse in order to reach any marital property that is available to satisfy the judgment. In other words, the Journal has the right to proceed against John in a garnishment action as long as John's wages are properly classified as marital property. See Courtyard Condominium Assoc., Inc. v. Draper, 2001 WI App 115, ¶11, 244 Wis. 2d 153, 629 N.W.2d 38 ("Read together, Wis. Stat. §§ 766.55(2) and 803.045(3) permit the judgment creditor to proceed against all marital property to satisfy a judgment on an obligation incurred during marriage, even where only one spouse is the judgment debtor.")

¶5. With regard to the classification of John's wages, Wis. Stat. § 766.31(4) provides that, subject to a few exceptions, "income earned or accrued by a spouse ... during marriage and

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[12]Depending on the type of obligation that was incurred, Wis. Stat. §766.55(2)(a)-(d) provides that either all of the marital property or the incurring spouse's interest in the marital property may be used to satisfy an obligation.

after the determination date[13]3 is marital property." Wisconsin Stat. § 766.01(10) further defines "Income" as including "wages." However, Wis. Stat. § 766.31(10) permits spouses to re-classify their property through a marital property agreement. See also Wis. Stat. § 766.31(7)(d). John contends that because he and Cynthia had a marital property agreement that re-classified John's wages as individual property, his wages cannot be used to satisfy a judgment against Cynthia.

¶6. The Journal does not contest the validity of John and Cynthia's agreement.[14] However, the Journal asserts that the marital agreement is not binding in this situation because it had no notice of the agreement. Under Wis. Stat. §766.55(4m), marital property agreements cannot limit the rights of a creditor "unless the creditor had actual knowledge of that provision when the obligation to that creditor was incurred."

¶7. In response, John first argues that the Journal is not a creditor, so it was not entitled to notice. He refers us to Wis. Stat. § 766.01(2r)(a), which defines "creditor" as "a person that regularly extends credit" and Matter of Geise, 132 B.R. 908 (Bankr. E.D. Wis. 1991), which held that the Wisconsin Department of Revenue was not a creditor under §766.01(2r)

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[13]Wisconsin Stat. § 766.01(5) provides:
"Determination date" means the last to occur of the following:
(a) Marriage.
(b) 12:01 a.m. on the date that both spouses are domiciled in this state.
(c) 12:01 a.m. on January 1, 1986.
There is no dispute that the John and Cynthia Schultz are married, or that they are domiciled in Wisconsin.

[14]A marital property agreement is invalid if it: was not signed by both spouses, Wis. Stat. § 766.58(1); is unconscionable, Wis. Stat. § 766.58(6)(a); was executed involuntarily, Wis. Stat. § 766.58(6)(b); or was executed without notice or financial disclosure to the other spouse, Wis. Stat. § 766.58(6)©). In addition, a marital property agreement may not adversely affect the right of a child to support. Wis. Stat. § 766.58(2).

because it was not "a merchant who regularly extends credit." Id. at 913. John therefore concludes that the meaning of creditor does not include a "judgment creditor." The interpretation of "creditor" in Geise, however, did not occur within the context of Wis. Stat. § 766.55(4m), and Wis. Stat. § 766.01(2r)(c) provides specifically that the definition of "creditor" in paragraph (2r)(a) does not apply to §766.55(4m). Further, the Legislative Council Notes for § 766.01 state that the term "creditor" as used in § 766.55(4m) is meant "in a broad sense." Therefore, Wis. Stat. § 766.01(2r) did not relieve John and Cynthia of the notice requirement. Further, if the Journal did not have actual notice of the agreement, then Wis. Stat. § 766.55(4m) requires that John's wages be treated as marital property for the purpose of determining what property is available to satisfy the judgment.

¶8. The next question is when "the obligation ... was incurred" for the purpose of giving notice to the Journal under Wis. Stat. § 766.55(4m). John contends the relevant date is when judgment was entered in the underlying action, which was March 30, 2000. Because the Journal was first aware of the existence of a marital property agreement on February 15, 2000, John claims that the notice requirement was satisfied. In contrast, the Journal posits the date of Cynthia's misconduct as the one that controls, or, alternatively, when Cynthia's case was dismissed as a sanction for attempted subornation of perjury. The circuit court found that Cynthia had attempted to suborn perjury from a witness most recently in September 1999, and Cynthia's defamation suit was dismissed on January 21, 2000. Because these dates both fall before John's asserted date when notice was given, the Journal argues that the requirement of § 766.55(4m) was not met.

¶9. We agree with the Journal that the relevant date is when the misconduct occurred. In the context of tort obligations, the Legislative Council Notes for Wis. Stat. § 766.55(2)(cm) state that, for a marital property agreement to have effect, the victim must have notice "at the time the tort occurs." Although the present situation is not identical to a

tort, we believe the two are sufficiently similar so that the same point of time should be used to determine when the obligation incurred. Both situations involve involuntary creditors in which the traditional purpose of giving notice of a marital agreement to a creditor, so that it can make an informed choice regarding a decision to extend credit, does not apply. Similar to a victim of a tort, the Journal had no opportunity to decide whether it would "extend credit" to Cynthia when she attempted to suborn perjury. We therefore agree with the circuit court that John's wages are marital property for the purpose of satisfying Cynthia's debt to the Journal.

¶10. In deciding that only Cynthia's interest in John's wages, i.e. fifty percent, were subject to garnishment, the circuit court concluded that the applicable provision of Wis. Stat. § 766.55 was paragraph (2)(cm), which provides that an obligation incurred as the result of a tort may be satisfied only from the incurring spouse's interest in the marital property. Because none of the parties challenge this aspect of the circuit court's decision, we need not decide whether § 766.55(2)(cm) was the correct provision to apply, or what amount of John's wages are subject to garnishment.

B. Constitutional Issues

¶11. John asserts various constitutional arguments that we need only briefly address. He first contends that, if Wis. Stat. §§ 766.55(4m) and 803.045 authorize the Journal to proceed against him, they are unconstitutional. We give statutes a presumption of constitutionality and parties challenging a statute must show that it is unconstitutional beyond a reasonable doubt before we will strike it down. State v. Hahn, 2000 WI 118, ¶30, 238 Wis. 2d 889, 618 N.W.2d 528.

¶12. According to John, Wis. Stat. § 766.55(4m) violates due process "because it authorizes the punishment of innocent parties for crimes they did not commit." We disagree, however, that John is being "punished" at all, let alone for a "crime" that he did not commit. Rather, § 766.55(4m) is merely

a notice requirement. When parties fail to give creditors notice of their marital property agreements, § 766.55(4m) provides that the default rules regarding ownership of property under the Marital Property Act will apply. Admittedly, satisfying the notice requirement with regard to involuntary creditors is no easy task. However, we do not believe this deprives John of due process of law. John has not cited authority giving him a constitutional right to shield marital property from creditors and he is not challenging Wis. Stat. § 766.31(3), which gives spouses an undivided one-half interest in all marital property. Therefore, his argument fails.

¶13. Next, relying on Sniadach v. Family Fin. Corp., 395 U.S. 337 (1969), and Connecticut v. Doehr, 501 U.S. 1 (1991), John contends that both Wis. Stat. §§ 803.045(3) and 766.55(4m) are unconstitutional. In Sniadach and Doehr, the Supreme Court struck down two statutes that authorized the taking of property before the creditor obtained a judgment. Sniadach, 395 U.S. at 341-42; Doehr, 501 U.S. at 24. John asserts that Wis. Stat. §§ 803.045(3) and 766.55(4m) similarly circumvent the requirements of due process because they allow creditors to initiate a garnishment proceeding before obtaining a judgment against the non-incurring spouse. This argument has been made previously in other states and rejected. Yakima v. Gillett, 854 P.2d 1212, 1215 (Ariz. Ct. App. 1993); Herbert v. User, 593 So.2d 977, 979-80 (La. Ct. App. 1992); Komm v. Department of Soc. & Health Serv., 597 P.2d 1372, 1375-76 (Wash. Ct. App. 1979). We agree with these courts that due process does not require a creditor to obtain a judgment against both spouses when marital property is being sought to satisfy an obligation. One spouse is sufficient to represent the marital community. Because John's individual property is not subject to garnishment, he has no due process claim.

¶14. John also cites to the Contracts Clause in Article I, § 10 and the Takings Clause in the Fifth Amendment of the United States Constitution, but never indicates how they might apply to this situation. We therefore decline to address those issues. See State v. Scherreiks, 153 Wis. 2d 510, 520, 451 N.W.2d

759 (Ct. App. 1989). In sum, John has not persuaded us that Wis. Stat. §§766.55(4m) and 803.045 are unconstitutional beyond a reasonable doubt.

¶15. In addition to challenging the constitutionality of the statutes, John also contends that the Journal violated his due process rights when it garnished his wages. As John recognizes, due process can be violated only if there is "state action." See DeShaney v. Winnebago County Dep't of Soc. Servs., 489 U.S. 189, 195 (1989). Citing Lugar v. Edmonson Oil Co., 457 U.S. 922 (1982), John argues that the Journal may be treated as a state actor because it acted "under color of state law." However, acting pursuant to a statute does not, without more, make one a state actor for the purpose of the Fourteenth Amendment. Flagg Bros., Inc. v. Brooks, 436 U.S. 149, 164-66 (1978). Moreover, if the statutes themselves are not unconstitutional, it is difficult to understand how the Journal, acting pursuant to those statutes, could be violating John's constitutional rights.

¶16. Finally, John challenges the underlying action on a number of grounds, including that the decision to award fees was a violation of his right to due process because it was made by a judge not a jury and that the amount of the award violated the Excessive Fines Clause of the Eighth Amendment. While we agree with John that "a garnishment derives its legitimacy from the suit it accompanies," it is in the context of that suit and not here that those claims should have been asserted. Cynthia did in fact raise many of the same arguments in the underlying suit, and we rejected them. Regardless, John's assertion of these issues here constitutes an impermissible collateral attack. See Schramek v. Bohren, 145 Wis. 2d 695, 713, 429 N.W.2d 501 (Ct. App. 1988) (holding that collateral attack is allowed only if party has shown underlying judgment was procured by fraud).

By the Court.-Order affirmed.
Recommended for publication in the official reports

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WI ST 766.58
W.S.A. 766.58

WEST'S WISCONSIN STATUTES ANNOTATED
MARRIAGE AND FAMILY
CHAPTER 766. PROPERTY RIGHTS OF MARRIED PERSONS; MARITAL PROPERTY

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Current through 2001 Act 43, published 2/15/02

766.58. Marital property agreements

(1) A marital property agreement shall be a document signed by both spouses. Only the spouses may be parties to a marital property agreement. A marital property agreement is enforceable without consideration.

(2) A marital property agreement may not adversely affect the right of a child to support.

(3) Except as provided in ss. 766.15, **766.55**(4m), 766.57(3) and 859.18(6), and in sub. (2), in a marital property agreement spouses may agree with respect to any of the following:

(a) Rights in and obligations with respect to any of either or both spouses' property whenever and wherever acquired or located.

(b) Management and control of any of either or both spouses' property.

(c) Disposition of any of either or both spouses' property upon dissolution or death or upon the occurrence or nonoccurrence of any other event.

(d) Modification or elimination of spousal support, except as provided in sub. (9).

(e) Making a will, trust or other arrangement to carry out the marital property agreement.

(f) Providing that upon the death of either spouse any of either or both spouses' property, including after-acquired property, passes without probate to a designated person, trust or other entity by nontestamentary disposition. Any such provision in a marital property agreement is revoked upon dissolution of the marriage as provided in s. 767.266 (1). If a marital property agreement provides for the nontestamentary disposition of property, without probate, at the death of the 2nd spouse, at any time after the death of the first spouse the surviving spouse may amend the marital property agreement with regard to property to be disposed of at his or her death unless the marital property agreement expressly provides otherwise and except to the extent property is held in a trust expressly established under the marital property agreement.

(g) Choice of law governing construction of the marital property agreement.

(h) Any other matter affecting either or both spouses' property not in violation of public policy or a statute imposing a criminal penalty.

(3m) Chapter 854 applies to transfers at death under a marital property agreement.

(4) A marital property agreement may be amended or revoked only by a later marital property agreement.

(5) Persons intending to marry each other may enter into a marital property agreement as if married, but the marital property agreement becomes effective only upon their marriage.

(6) A marital property agreement executed before or during marriage is not enforceable if the spouse against whom enforcement is sought proves any of the following:

(a) The marital property agreement was unconscionable when made.

(b) That spouse did not execute the marital property agreement voluntarily.

(c) Before execution of the marital property agreement, that spouse:

1. Did not receive fair and reasonable disclosure, under the circumstances, of the other spouse's property or financial obligations; and

2. Did not have notice of the other spouse's property or financial obligations.

(7)(a) Unless the marital property agreement expressly provides otherwise, a marital property agreement that classifies a deferred employment benefit plan or an individual retirement account as marital property does not affect the operation of s. 766.62(5).

(b) Unless the marital property agreement expressly provides otherwise, a marital property agreement that classifies as marital property the noninsured spouse's interest in a policy that designates the other spouse as the owner and insured does not affect the operation of s. 766.61(7). In this paragraph, "owner" has the meaning given in s. 766.61(1)(a) and "policy" has the meaning given in s. 766.61(1)(c).

(8) The issue of whether a marital property agreement is unconscionable is for the court to decide as a matter of law. In the event that legal counsel is retained in connection with a marital property agreement the fact that both parties are represented by one counsel or that one party is represented by

counsel and the other party is not represented by counsel does not by itself make a marital property agreement unconscionable or otherwise affect its enforceability.

(9)(a) Modification or elimination of spousal support during the marriage may not result in a spouse having less than necessary and adequate support, taking into consideration all sources of support.

(b) If a marital property agreement modifies or eliminates spousal support so as to make one spouse eligible for public assistance at the time of dissolution of the marriage or termination of the marriage by death, the court may require the other spouse or the other spouse's estate to provide support necessary to avoid that eligibility, notwithstanding the marital property agreement.

(10) If the spouses agree in writing to arbitrate any controversies arising under this chapter or a marital property agreement, the arbitration agreement is enforceable under ch. 788.

(11) Married persons or persons intending to marry each other may record a marital property agreement in the county register of deeds office under s. 59.43(1)(r).

(12)(a) A provision of a document signed before the determination date by spouses or unmarried persons who subsequently married each other, which provision affects the property of either of them and is enforceable by either of them without reference to this chapter, is not affected by this chapter except as provided otherwise in a marital property agreement made after the determination date.

(b) If a provision or an amendment to a provision in a document described under par. (a) is intended to negate, apply or modify any right or obligation which may be acquired under 1983 Wisconsin Act 186, 1985 Wisconsin Act 37 or a community property system, the provision or amendment is

enforceable after the determination date if the document was enforceable when executed or, if it is executed after April 4, 1984, either was enforceable when executed or would be enforceable if it were executed after the determination date.

(c) This subsection does not affect a marital property agreement executed under s. 766.585.

(13)(a) With respect to a provision of a marital property agreement that is effective upon or after dissolution of the marriage or termination of the marriage by death, any statute of limitations applicable to enforcement of the provision is tolled until dissolution of the marriage or termination of the marriage by death, respectively.

(b) After the death of a spouse, no action concerning a marital property agreement may be brought later than 6 months after the inventory is filed under s. 858.01. If an amended inventory is filed, the action may be brought within 6 months after the filing of the amended inventory if the action relates to information contained in the amended inventory that was not contained in a previous inventory.

(c) The court may extend the 6-month period under par. (b) for cause if a motion for extension is made within the applicable 6-month period.

(14) Limitations on the effect of marital property agreements for state income tax purposes are set forth in ch. 71.

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WEST'S WISCONSIN STATUTES ANNOTATED
MARRIAGE AND FAMILY
CHAPTER 766. PROPERTY RIGHTS OF MARRIED PERSONS; MARITAL PROPERTY

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Current through 2001 Act 43, published 2/15/02

766.31. Classification of property of spouses

(1) All property of spouses is marital property except that which is classified otherwise by this chapter and that which is described in sub. (8).

(2) All property of spouses is presumed to be marital property.

(3) Each spouse has a present undivided one-half interest in each item of marital property, but the marital property interest of the nonemployee spouse in a deferred employment benefit plan or in assets in an individual retirement account that are traceable to the rollover of a deferred employment benefit plan terminates at the death of the nonemployee spouse if he or she predeceases the employee spouse.

(4) Except as provided under subs. (7)(a), (7p) and (10), income earned or accrued by a spouse or attributable to property of a spouse during marriage and after the determination date is marital property.

(5) The transfer of property to a trust does not by itself change the classification of the property.

(6) Property owned at a marriage which occurs after 12:01 a.m.

on January 1, 1986, is individual property of the owning spouse if, at the marriage, both spouses are domiciled in this state.

(7) Property acquired by a spouse during marriage and after the determination date is individual property if acquired by any of the following means:

(a) By gift during lifetime or by a disposition at death by a 3rd person to that spouse and not to both spouses. A distribution of principal or income from a trust created by a 3rd person to one spouse is the individual property of that spouse unless the trust provides otherwise.

(b) In exchange for or with the proceeds of other individual property of the spouse.

(c) From appreciation of the spouse's individual property except to the extent that the appreciation is classified as marital property under s. 766.63.

(d) By a decree, marital property agreement or reclassification under sub. (10) designating it as the individual property of the spouse.

(e) As a recovery for damage to property under s. 766.70,[A52] except as specifically provided otherwise in a decree or marital property agreement.

(f) As a recovery for personal injury except for the amount of that recovery attributable to expenses paid or otherwise satisfied from marital property and except for the amount attributable to loss of income during marriage.

(7p) Income attributable to all or specified property other than marital property, with respect to which a spouse has executed under s. 766.59 a statement unilaterally designating that income as his or her individual property, is individual property.

(8) Except as provided otherwise in this chapter, the enactment of this chapter does not alter the classification and ownership rights of property acquired before the determination date or the classification and ownership rights of property acquired after the determination date in exchange for or with the proceeds of property acquired before the determination date.

(9) Except as provided otherwise in this chapter and except to the extent that it would affect the spouse's ownership rights in the property existing before the determination date, during marriage the interest of a spouse in property owned immediately before the determination date is treated as if it were individual property.

(10) Spouses may reclassify their property by gift, conveyance, as defined in s. 706.01(4), signed by both spouses, marital property agreement, written consent under s. 766.61(3)(e) or unilateral statement under s. 766.59 and, if the property is a security, as defined in s. 705.21(11), by an instrument, signed by both spouses, which conveys an interest in the security. If a spouse gives property to the other spouse and intends at the time the gift is made that the property be the individual property of the donee spouse, the income from the property is the individual property of the donee spouse unless a contrary intent of the donor spouse regarding the classification of income is established.

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WEST'S WISCONSIN STATUTES ANNOTATED
MARRIAGE AND FAMILY
CHAPTER 766. PROPERTY RIGHTS OF MARRIED PERSONS; MARITAL PROPERTY

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766.01. Definitions

In this chapter:

(1) "Acquiring" property includes reducing indebtedness on encumbered property and obtaining a lien on or security interest in property.

(2) "Appreciation" means a realized or unrealized increase in the value of property.

(2m)(a) Except as provided in pars. (b) and (c), "credit" means the right granted by a creditor to defer payment of a debt, incur debt and defer its payment or purchase property or services and defer payment for the property or services.

(b) If used in connection with a transaction governed under chs. 421 to 427, "credit" has the meaning specified in s. 421.301(14).

(c) Paragraph (a) does not apply to s. 766.56(2)(c) and (d).

(2r)(a) Except as provided in pars. (b) and (c), "creditor" means a person that regularly extends credit.

(b) If used in connection with a transaction governed under chs. 421 to 427, "creditor" has the meaning specified in s. 421.301(16).

(c) Paragraph (a) does not apply to s. **766.55**(3) to (4m), 766.56(2)(c) and (d) or 766.61(4).

(3) "Decree" means a judgment or other order of a court.

(3m) "Deferred employment benefit" means a benefit from a deferred employment benefit plan.

(4)(a) "De erred employment benefit plan" means a plan, fund, program or other arrangement under which compensation or benefits from employment are expressly, or as a result of surrounding circumstances, deferred to a later date or the happening of a future event. "Deferred employment benefit plan" includes but is not limited to a pension, profit sharing or stock-bonus plan, an employee stock-ownership or stock-purchase plan, a savings or thrift plan, an annuity plan, a qualified bond-purchase plan, a self-employed retirement plan, a simplified employee pension and a deferred compensation agreement or plan.

(b) "Deferred employment benefit plan" does not include life, health, accident or other insurance or a plan, fund, program or other arrangement providing benefits similar to insurance benefits, except to the extent that benefits under the plan:

1. Have a present value that is immediately realizable in cash at the option of the employee;

2. Constitute an unearned premium for the coverage;

3. Represent a right to compensation for loss of income during disability; or

4. Represent a right to payment of expenses incurred before time of valuation.

(5) "Determination date" means the last to occur of the following:

(a) Marriage.

(b) 12:01 a.m. on the date that both spouses are domiciled in this state.

(c) 12:01 a.m. on January 1, 1986.

(6) "Disposition at death" means transfer of property by will, intestate succession, nontestamentary transfer or other means that takes effect at the transferor's death.

(7) "Dissolution" means termination of a marriage by a decree of dissolution, divorce, annulment or declaration of invalidity or entry of a decree of legal separation or separate maintenance. The term does not include a decree resulting from an action available under ch. 767 which is not an annulment, a divorce or a legal separation.

(8) "During marriage" means a period in which both spouses are domiciled in this state that begins at the determination date and ends at dissolution or at the death of a spouse.

(9)(a) Except as provided in pars. (b) to (d), property is "held" by a person only if a document of title to the property is registered, recorded or filed in a public office in the name of the person or a writing that customarily operates as a document of title to the type of property is issued for the property in the person's name.

(b) An account is "held" by the person who, by the terms of the account, has a present right, subject to request, to payment from the account other than as an agent. Accounts that are so "held" include accounts under s. 705.01(1) and brokerage accounts.

(c) An uncertificated security, as defined under s. 408.102 (1)

(r), is "held" by the person identified as the registered owner of the security upon books maintained for that purpose by or on behalf of the issuer. If the registered owner of an uncertificated security is identified as a brokerage account, the security is "held" as provided under par. (b).

(d) The property rights, as specified and described in ss. 178.21 and 178.22, of a partner in a general partnership are "held" by the partner.

(10) "Income" means wages, salaries, commissions, bonuses, gratuities, payments in kind, deferred employment benefits, proceeds, other than death benefits, of any health, accident or disability insurance policy or of any plan, fund, program or other arrangement providing benefits similar to those forms of insurance, other economic benefits having value attributable to the effort of a spouse, dividends, dividends on life insurance and annuity contracts to the extent that the aggregate of the dividends exceeds the aggregate premiums paid, interest, income distributed from trusts and estates, and net rents and other net returns attributable to investment, rental, licensing or other use of property, unless attributable to a return of capital or to appreciation.

(11) "Management and control" means the right to buy, sell, use, transfer, exchange, abandon, lease, consume, expend, assign, create a security interest in, mortgage, encumber, dispose of, institute or defend a civil action regarding or otherwise deal with property as if it were property of an unmarried person.

(12) "Marital property agreement" means an agreement that complies with s. 766.58, 766.585, 766.587, 766.588 or 766.589. The term does not include the financial disclosure form under s. 766.588(9) or 766.589(10).

(13) A person has "notice" of a fact if the person has knowledge of it, receives a notification of it, or has reason to know that it exists from the facts and circumstances known to

the person.

(15) "Property" means an interest, present or future, legal or equitable, vested or contingent, in real or personal property.

(16) "Written consent" means a document signed by a person against whose interests it is sought to be enforced.

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W.S.A. 766.55

WEST'S WISCONSIN STATUTES ANNOTATED
MARRIAGE AND FAMILY
CHAPTER 766. PROPERTY RIGHTS OF MARRIED PERSONS; MARITAL PROPERTY

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Current through 2001 Act 43, published 2/15/02

766.55. Obligations of spouses

(1) An obligation incurred by a spouse during marriage, including one attributable to an act or omission during marriage, is presumed to be incurred in the interest of the marriage or the family. A statement separately signed by the obligated or incurring spouse at or before the time the obligation is incurred stating that the obligation is or will be incurred in the interest of the marriage or the family is conclusive evidence that the obligation to which the statement refers is an obligation in the interest of the marriage or family, except that the existence of that statement does not affect any interspousal right or remedy.

(2) After the determination date all of the following apply:

(a) A spouse's obligation to satisfy a duty of support owed to the other spouse or to a child of the marriage may be satisfied only from all marital property and all other property of the obligated spouse.

(b) An obligation incurred by a spouse in the interest of the marriage or the family may be satisfied only from all marital property and all other property of the incurring spouse.

(c) 1. An obligation incurred by a spouse before or during marriage that is attributable to an obligation arising before marriage or to an act or omission occurring before marriage may be satisfied only from property of that spouse that is not marital property and from that part of marital property which would have been the property of that spouse but for the marriage.

2. An obligation incurred by a spouse before, on or after January 1, 1986, that is attributable to an obligation arising before January 1, 1986, or to an act or omission occurring before January 1, 1986, may be satisfied only from property of that spouse that is not marital property and from that part of marital property which would have been the property of that spouse but for the enactment of this chapter.

(cm) An obligation incurred by a spouse during marriage, resulting from a tort committed by the spouse during marriage, may be satisfied from the property of that spouse that is not marital property and from that spouse's interest in marital property.

(d) Any other obligation incurred by a spouse during marriage, including one attributable to an act or omission during marriage, may be satisfied only from property of that spouse that is not marital property and from that spouse's interest in marital property, in that order.

(2m) Unless the dissolution decree or any amendment to the decree so provides, no income of a nonincurring spouse is available for satisfaction of an obligation under sub. (2)(b) after entry of the decree. Marital property assigned to each spouse under that decree is available for satisfaction of such an obligation to the extent of the value of the marital property at the date of the decree. If a dissolution decree provides that the nonincurring spouse is responsible for satisfaction of the obligation, the obligation may be satisfied as if both spouses had incurred the obligation.

(3) This chapter does not alter the relationship between spouses and their creditors with respect to any property or obligation in existence on the determination date. An obligation of a guarantor, surety or indemnitor arising after the determination date under a guaranty or contract of indemnity or surety executed before the determination date is an obligation in existence on the determination date.

(4) Any written consent signed by a creditor which diminishes the rights of the creditor provided in this section is binding on the creditor.

(4m) Except as provided under s. 766.56(2)(c), no provision of a marital property agreement or of a decree under s. 766.70 adversely affects the interest of a creditor unless the creditor had actual knowledge of that provision when the obligation to that creditor was incurred or, in the case of an open-end plan, as defined under s. 766.555(1)(a), when the plan was entered into. If a creditor obtains actual knowledge of a provision of a marital property agreement or decree after an obligation is incurred or an open-end plan is entered into, the provision does not adversely affect the interest of the creditor with respect to that obligation or plan, including any renewal, extension, modification or use of the obligation or plan. The effect of this subsection may not be varied by a marital property agreement or a decree. This subsection does not affect the application of ch. 706.

(5) This chapter does not affect the exemption of any property of spouses from availability for satisfaction of an obligation, provided by other law.

(6) Subsections (2) and (2m) and s. 859.18 do not affect the satisfaction of an obligation of a spouse from collateral or other security for that obligation.

(7) Property available under this chapter to satisfy an obligation of a spouse is available regardless of whether the property is located in this state or whether this chapter no

longer applies because one or both spouses are no longer domiciled in this state.

(8) After the death of a spouse, property is available for satisfaction of obligations as provided in s. 859.18.

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MARRIAGE AND FAMILY
CHAPTER 766. PROPERTY RIGHTS OF MARRIED PERSONS; MARITAL PROPERTY

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766.555. Obligations of spouses under open-end plans

(1) In this section:

(a) "Open-end plan" means credit extended on an account pursuant to a plan under which the creditor may permit a spouse to make purchases or obtain loans, from time to time, directly from the creditor or indirectly by use of a credit card, check or other device, as the plan may provide.

(b) "Open-end plan" includes only those open-end plans entered into by a person whose spouse is not a party to the account.

(2)(a) This subsection applies to spouses for whom the determination date is 12:01 a.m. on January 1, 1986.

(b) Unless additional property is available under par. (c), an obligation incurred by a spouse on or after January 1, 1986, under an open-end plan entered into by that spouse before January 1, 1986, may be satisfied only from property of that spouse that is not marital property and from that part of marital property that would have been the property of that spouse but for the enactment of this chapter.

(c) 1. An obligation described under s. **766.55**(2)(b) incurred by a spouse on or after January 1, 1986, under an open-end plan entered into by that spouse before January 1, 1986, may be satisfied only from property of that spouse that is available under par. (b) and, if the creditor gives written notice complying with this paragraph to both spouses prior to the date the obligation is incurred, from all marital property.

2. The notice under subd. 1 shall describe the nature of the open-end plan and state that an obligation described under s. **766.55**(2)(b) that is incurred under the open-end plan may be satisfied from all marital property of the spouses, including the income of both spouses, and from the property of the incurring spouse that is not marital property.

3. The notice under subd. 1 is considered given on the date it is mailed by the creditor.

4. The notice under subd. 1 may be enclosed in an envelope addressed to the incurring spouse at the last-known address of that spouse appearing on the records of the creditor if a statement appears on the face of the envelope alerting both spouses that the envelope contains important information for both spouses.

(3)(a) This subsection applies to persons for whom the determination date is after 12:01 a.m., January 1, 1986.

(b) Except as provided under par. (c), an obligation incurred by a spouse after the determination date for that spouse, under an open-end plan entered into by that spouse before that determination date, may be satisfied only from all property of that spouse that is not marital property and from that part of marital property which would have been the property of that spouse but for the enactment of this chapter.

(c) An obligation described under s. **766.55**(2)(b) incurred by a spouse after the determination date for that spouse under an

open-end plan entered into by that spouse before that determination date may be satisfied from all marital property and all other property of the incurring spouse.

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WEST'S WISCONSIN STATUTES ANNOTATED
CIVIL PROCEDURE
CHAPTER 803. CIVIL PROCEDURE--PARTIES

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803.045. Actions to satisfy spousal obligations

(1) Except as provided in sub. (2), when a creditor commences an action on an obligation described in s. **766.55**(2), the creditor may proceed against the obligated spouse, the incurring spouse or both spouses.

(2) In an action on an obligation described in s. **766.55**(2)(a) or (b), a creditor may proceed against the spouse who is not the obligated spouse or the incurring spouse if the creditor cannot obtain jurisdiction in the action over the obligated spouse or the incurring spouse.

(3) After obtaining a judgment, a creditor may proceed against either or both spouses to reach marital property available for satisfaction of the judgment.

(4) This section does not affect the property available under s. **766.55**(2) to satisfy the obligation.

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WEST'S WISCONSIN STATUTES ANNOTATED
MARRIAGE AND FAMILY
CHAPTER 766. PROPERTY RIGHTS OF MARRIED PERSONS; MARITAL PROPERTY

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766.56. Credit transactions with married persons

(1) If a spouse applies for credit that will result in an obligation described under s. 766.55(2)(b), the creditor, in evaluating the spouse's creditworthiness, shall consider all marital property available under s. 766.55(2)(b) to satisfy the obligation in the same manner that the creditor, in evaluating the creditworthiness of an unmarried credit applicant, considers the property of an unmarried credit applicant available to satisfy the obligation.

(2)(a) The recording, under s. 59.43(1)(r), of a marital property agreement or a unilateral statement or revocation under s. 766.59 does not constitute actual or constructive notice to 3rd parties. This paragraph does not affect the application of ch. 706.

(b) A creditor shall include in every written application for an extension of credit that is governed by chs. 421 to 427 a notice that no provision of a marital property agreement, a unilateral statement under s. 766.59 or a court decree under s. 766.70 adversely affects the interest of the creditor unless the creditor, prior to the time the credit is granted, is furnished a copy of the agreement, statement or decree or has actual knowledge of

the adverse provision when the obligation to the creditor is incurred. The notice requirement under this paragraph does not apply to renewals, extensions or modifications or the use of an open-end credit plan.

(c) If the applicant spouse in any credit transaction discloses the existence of a currently effective marital property agreement or a decree issued under s. 766.70 and provides a copy of it to the creditor prior to the time credit is granted or, in the case of an open-end plan, as defined under s. 766.555(1)(a), prior to the time the open-end plan is entered into, the creditor is bound by any property classification, characterization of an obligation, or management and control right contained in the agreement or decree. If a spouse discloses the existence of an agreement or decree after credit is granted or an open-end plan is entered into, the creditor is not bound under this paragraph by the agreement or decree with respect to that obligation or open-end plan, including any renewals, extensions, modifications or use of the obligation or open-end plan.

(d) When a person applies for credit, the creditor may inquire as to whether the person is married, unmarried or separated, under a decree of legal separation.

(3)(a) In this subsection, "extends credit" means that an open-end credit plan, as defined under s. 421.301(27), is established after the determination date, or that credit other than open-end credit is extended after the determination date. The term does not include renewals, extensions, modifications or the use of an open-end credit plan. This subsection does not apply to an open-end credit plan described under s. 766.555(2) or (3).

(b) Except as provided in par. (c), if a creditor extends credit to a spouse in a credit transaction governed by chs. 421 to 427 and the extension of credit may result in an obligation described under s. 766.55(2)(b), the creditor shall give the nonapplicant spouse written notice of the extension of credit before any payment is due. The notice requirement may be

satisfied by providing a copy of the instrument, document, agreement or contract evidencing the obligation to pay or any required credit disclosure which is given to the applicant spouse, or by providing a separate writing briefly describing the nature of the credit extended. Notice is considered given on the date it is mailed to the address of the nonapplicant spouse provided to the creditor by the applicant spouse. If the applicant spouse informs the creditor that the spouses reside at the same address, the notice may be enclosed in an envelope addressed to the nonapplicant spouse or both spouses.

(c) Notice is considered given under par. (b) if the nonapplicant spouse has actual knowledge that the credit is extended or waives the notice requirement in a signed writing.

(4)(a) Any financial organization or any other credit-granting commercial institution that violates sub. (1) is subject to the penalties under s. 138.20.

(b) Except as provided in par. (c), a creditor that fails to give notice under sub. (2)(b) is liable to each applicant spouse in the amount of $25. Except as provided in par. (c), a creditor that fails to give notice under sub. (3) is liable to the nonapplicant spouse in the amount of $25.

(c) A creditor is not subject to a penalty under par. (b) if the creditor shows by a preponderance of the evidence that failure to give notice was unintentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid such error.

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WEST'S WISCONSIN STATUTES ANNOTATED
MARRIAGE AND FAMILY
CHAPTER 766. PROPERTY RIGHTS OF MARRIED PERSONS; MARITAL PROPERTY

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766.97. Equal rights; common law disabilities

(1) Women and men have the same rights and privileges under the law in the exercise of suffrage, freedom of contract, choice of residence, jury service, holding office, holding and conveying property, care and custody of children and in all other respects. The various courts and executive and administrative officers shall construe the statutes so that words importing one gender extend and may be applied to either gender consistent with the manifest intent of the legislature. The courts and executive and administrative officers shall make all necessary rules and provisions to carry out the intent and purpose of this subsection.

(2) Nothing in this chapter revives the common law disabilities on a woman's right to own, manage, inherit, transfer or receive gifts of property in her own name, to enter into contracts in her own name or to institute civil actions in her own name. Except as otherwise provided in this chapter and in other sections of the statutes controlling marital property or property of spouses that is not marital property, either spouse has the right to own and exclusively manage his or her property that is not marital property, enter into contracts with 3rd parties or with his or her spouse, institute

and defend civil actions in his or her name and maintain an action against his or her spouse for damages resulting from that spouse's intentional act or negligence.

(3) The common law rights of a spouse to compel the domestic and sexual services of the other spouse are abolished. Nothing in this subsection affects a spouse's common law right to consortium or society and companionship.

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WI CONST Art. 1, S 12
W.S.A. Const. Art. 1, § 12

WEST'S WISCONSIN STATUTES ANNOTATED
CONSTITUTION OF THE STATE OF WISCONSIN
ARTICLE I. DECLARATION OF RIGHTS

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Current with amendments received through 3/1/02

§ 12. Attainder; ex post facto; contracts

Section 12. No bill of attainder, ex post facto law, nor any law impairing the obligation of contracts, shall ever be passed, and no conviction shall work corruption of blood or forfeiture of estate.

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WEST'S WISCONSIN STATUTES ANNOTATED
MARRIAGE AND FAMILY
CHAPTER 766. PROPERTY RIGHTS OF MARRIED PERSONS; MARITAL PROPERTY

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766.61. Classification of life insurance policies and proceeds

(1) In this section:

(a) "Owner" means a person appearing on the records of the policy issuer as the person having the ownership interest, or means the insured if no person other than the insured appears on those records as a person having that interest. In the case of group insurance, the term means the holder of each individual certificate of coverage under the group plan and does not include the person who contracted with the policy issuer on behalf of the group, regardless of whether that person is listed as the owner on the contract.

(b) Except as provided in sub. (3)(e), "ownership interest" means the rights of an owner under a policy.

(c) "Policy" means an insurance policy insuring the life of a spouse and providing for payment of death benefits at the spouse's death and, for purposes of sub. (3)(e), the term includes an insurance policy insuring the life of any individual and providing for payment of death benefits at the death of the insured. This paragraph does not apply to sub. (2).

(d) "Proceeds" means the death benefit from a policy and all

other economic benefits from it, whether they accrue or become payable as a result of the death of an insured person or upon the occurrence or nonoccurrence of another event.

(2)(a) In this subsection:

1. "Business day" has the meaning given under s. 421.301(6).

2. "Notice of claim" means a written notice, by or on behalf of a spouse, former spouse, surviving spouse or a person claiming under a deceased spouse's disposition at death, that the person claims to be entitled to proceeds, payments or an interest in the policy.

3. "Policy" means an insurance policy insuring the life of a spouse or a life insurance policy of which a spouse is the owner.

(b) Except as provided in par. (c):

1. A policy issuer may rely on and act in accordance with the issuer's policy and records. If a policy issuer makes payments or takes actions in accordance with the policy and the issuer's records, the issuer is not liable because of those payments or actions.

2. The classification of a policy or a portion of a policy as marital property has no effect on the policy issuer's duty to perform under the issuer's contract when making payment or taking action in accordance with the policy and the issuer's records.

(c) 1. If at least 5 business days before making payment or taking action in accordance with the issuer's policy and records, a policy issuer has received at its home office a notice of claim, the issuer shall notify the party directing the payment or action of the receipt of the notice of claim and shall not take any action on the policy for 14 business days.

2. If within 14 business days after receiving the notice of claim the issuer receives at its home office, as purporting to support the notice of claim, a decree, marital property agreement, written directive signed by the beneficiary and surviving spouse, consent under sub. (3)(e) or proof that a legal action has been filed, including a copy of an election filed pursuant to s. 861.08 (1), to secure an interest as evidenced in such a document, the issuer shall make payment or take action on the policy after the issuer receives from a court or from the claimant and the person directing action or payment written documentation indicating that the dispute has been resolved.

3. If documentation purporting to support the claim is not submitted as described under subd. 2, the policy issuer shall take action or make payment as if the notice of claim had not been received.

(d) A policy issuer is not liable to any person for any claim for damages as a result of the issuer's suspension of policy action or the taking of any action pursuant to this subsection. A policy issuer shall pay interest which accrues during the suspension of any action under this subsection.

(2m)(a) In determining the marital property component of the ownership interest and proceeds of a policy under sub. (3), the date on which a policy becomes effective is the date of original issuance or coverage of the policy, whichever is earlier, if the policy is thereafter kept in force merely by continuing premium payments, without any further underwriting by the issuer. If additional underwriting is required after original issuance of the policy or if the amount of proceeds increases after original issuance as a result of unscheduled additional premiums paid by the policyholder, the effective date of the policy is the date on which the newly underwritten right to proceeds or the right to increased proceeds begins.

(b) In determining the marital property component of the ownership interest and proceeds of a group policy sponsored by an employer or association under sub. (3), the date on

which the policy becomes effective is the date on which individual coverage begins, notwithstanding that the employer or association thereafter changes policy issuers or that the amount of coverage changes under the policy pursuant to the plan or benefit offered by the employer or association. If additional underwriting is required after original issuance of the policy, or if the coverage is provided by a different employer or association, the effective date of the policy is the date on which the newly underwritten or newly provided coverage begins.

(3) Except as provided in subs. (4) to (6):

(a)1. Except as provided in subd. 2, the ownership interest and proceeds of a policy issued after the determination date which designates the insured as the owner are marital property, regardless of the classification of property used to pay premiums on the policy.

2. If after the issuance of a policy described under subd. 1 the insured or his or her spouse are at any time not domiciled in this state, the ownership interest and proceeds of the policy are mixed property. The marital property component of the ownership interest and proceeds is the amount which results from multiplying the entire ownership interest and proceeds by a fraction, the numerator of which is the period during marriage that the policy was in effect and the denominator of which is the entire period that the policy was in effect.

(b) The ownership interest and proceeds of a policy issued before the determination date which designates the insured as the owner are mixed property if a premium on the policy is paid from marital property after the determination date, regardless of the classification of property used to pay premiums on that policy after the initial payment of a premium on it from marital property. The marital property component of the ownership interest and proceeds is the amount which results from multiplying the entire ownership interest and proceeds by a fraction, the numerator of which is

the period during marriage that the policy was in effect after the date on which a premium was paid from marital property and the denominator of which is the entire period that the policy was in effect.

(c)1. Except as provided in subd. 2, the ownership interest and proceeds of a policy which designates the spouse of the insured as the owner are individual property of its owner, regardless of the classification of property used to pay premiums on the policy.

2. If after the issuance of a policy described under subd. 1 the insured or his or her spouse are at any time not domiciled in this state, the ownership interest and proceeds of the policy are individual property and property that is other than individual or marital property. The individual property component of the ownership interest and proceeds is the amount which results from multiplying the entire ownership interest and proceeds by a fraction, the numerator of which is the entire period during which the policy was in effect less that period during which the insured or his or her spouse were at any time not domiciled in this state and the denominator of which is the entire period that the policy was in effect.

(d) This chapter does not affect the ownership interest and proceeds of a policy that designates a person other than either spouse as the owner, if no premium on the policy is paid from marital property after the determination date. If a premium on the policy is paid from marital property after the determination date, the ownership interest and proceeds of the policy are in part property of the designated owner of the policy and in part marital property of the spouses, regardless of the classification of property used to pay premiums on that policy after the initial payment of a premium on it from marital property. The marital property component of the ownership interest and proceeds is the amount which results from multiplying the entire ownership interest and proceeds by a fraction, the numerator of which is the period during marriage that the policy was in effect after the date on which

a premium was paid from marital property and the denominator of which is the entire period that the policy was in effect.

(e) A written consent in which a spouse consents to the designation of another person as the beneficiary of the proceeds of a policy or consents to the use of property to pay premiums on a policy is effective, to the extent that the written consent provides, to relinquish or reclassify all or a portion of that spouse's interest in property used to pay premiums on the policy or in the ownership interest or proceeds of the policy without regard to the classification of property used by a spouse or another person to pay premiums on that policy. Unless the written consent expressly provides otherwise, a written consent under this paragraph is revocable in writing and is effective only with respect to the beneficiary named in it. Unless the written consent expressly provides otherwise, a revocation of a written consent is effective no earlier than the date on which it is signed by the revoking spouse and does not operate to reclassify any property which was reclassified or in which the revoking spouse relinquished an interest from the date of the consent to the date of revocation. In this paragraph, "ownership interest" includes the interests of a spouse in a policy who is not an owner under the policy.

(f) Designation of a trust as the beneficiary of the proceeds of a policy with a marital property component does not by itself reclassify that component.

(4) This section does not affect a creditor's interest in the ownership interest or proceeds of a policy assigned to the creditor as security or payable to the creditor.

(5) The interest of a person as owner or beneficiary of a policy acquired under a decree or property settlement agreement incident to a prior marriage or to parenthood is not marital property, regardless of the classification of property used to pay premiums on that policy.

(6) This section does not affect the ownership interest or proceeds of a policy if neither spouse is designated as an owner in the policy or the policy issuer's records and no marital property is used to pay a premium on the policy.

(7) If a noninsured spouse predeceases an insured spouse, the marital property interest of the decedent spouse in a policy which designates the surviving spouse as the owner and insured is limited to a dollar amount equal to one-half of the marital property interest in the interpolated terminal reserve and in the unused portion of the term premium of the policy on the date of death of the deceased spouse. All other rights of the decedent spouse in the ownership interest or proceeds of the policy, other than the marital property interest described in this subsection, terminate at the decedent spouse's death.

(8) This section does not apply to a policy held by a deferred employment benefit plan. Classification of a deferred employment benefit, regardless of the nature of the assets held by the deferred employment benefit plan, is determined under s. 766.62.

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LEGISLATIVE COUNCIL NOTES--1991 ACT 301, §§ 23 TO 26

2001 Main Volume

[Amendment of subsecs. (2m)(a) and (3)(c)(2)] 1. Substitutes "proceeds" for "coverage" because the former term, a term of art in the insurance industry, includes any economic benefit.

2. Deletes reference to "mixed property" because, as ordinarily used in the marital property law, the term assumes a component of marital property, which is absent here.

3. Deletes reference to "during marriage and after the determination date" because the ownership interest and

proceeds of a policy which designates the spouse of the insured as the owner arguably are classified by s. **766.61**(3)(c)1 as individual property, even if the policy was issued before January 1, 1986. Therefore, the operative period for determining the individual property component of such a policy is the period during which both spouses are domiciled in the state after the policy is issued.

Use of the term "ownership interest" in s. **766.61**(3)(e), relating to written consents in connection with insurance policies, is intended to be broader than the defined term [see, in particular, the definition of "owner" in s. **766.61**(1)(a)]. The new language [in amendment of subsec. (3)(e)], therefore, expands the term for purposes of s. **766.61**(3)(e). Note that the definition of "policy" was expanded for similar reasons in 1987 Wisconsin Act 393.

[Amendment of subsec. (7)] 1. Removes reference to the remedies under s. 766.70(6)(b)3. See the treatment of s. 766.70(6)(b)3 by Section 30.

2. Removes reference to failure of the surviving spouse to purchase the decedent spouse's marital property interest under s. 766.70(7).

The above changes reflect that s. **766.61**(7) is intended simply to be a rule on the value of the noninsured spouse's marital property interest in a policy owned by the insured spouse when the noninsured spouse dies first.

[Amendment of subsec. (8)] Clarifies that s. 766.62 does not classify the ownership interest and proceeds of a life insurance policy held by a deferred employment benefit plan; rather, the section classifies deferred employment benefits.

LEGISLATIVE COUNCIL COMMITTEE NOTES--1987 ACT 393

The amendment to s. **766.61**(1)(a) clarifies the meaning of "owner" as the term applies to group insurance where, for example, the records of the policy issuer list an employer providing group insurance for employees as the owner of the policy but where the employee has the right to designate the beneficiary.

The amendment to s. **766.61**(1)(c) allows written consents under s. **766.61**(3)(e), in which a spouse may consent to the designation of another person as beneficiary or consent to the use of property to pay premiums on a policy, to be used in connection with an insurance policy insuring the life of any individual. Under former law, use of written consents was limited to an insurance policy insuring the life of a spouse.

Provides specific protections for insurers with respect to making payments or taking actions in accordance with the insurance policy and the issuer's records. Under former law, if an issuer of an insurance policy made payments or took actions in accordance with the policy and the issuer's records, the issuer was not liable because of those payments or actions unless, at the time of the payments or actions, the insurer had actual knowledge of an inconsistent decree or marital property agreement or of an adverse claim by a spouse, former spouse or surviving spouse or person claiming under a deceased spouse's disposition at death. Insurers raised concerns about what constituted actual knowledge of an adverse claim. The revised provision provides more certainty regarding when insurers may rely on the terms of the policy and their records and when they must recognize an adverse claim.

Under the new provision, a policy issuer generally may rely on and act in accordance with the issuer's policy and records; if an issuer makes payments or takes actions in accordance with the policy and issuer's records, the issuer is not liable because of those payments or actions. An exception to the

general rule arises when a policy issuer receives a timely written notice of claim which asserts that the claimant is entitled to proceeds, payments or an interest in a policy. General ground rules are provided for an insurer's response to a timely written notice of claim.

[Subsection (2m)] Specifies, for purposes of determining the marital property component of the ownership interest and proceeds of a life insurance policy insuring the life of a spouse, the effective date of the policy. Paragraph (a) applies to nongroup policies. Paragraph (b) applies to group policies provided by employers or associations.

The rule under par. (a) has the benefit of simplicity although, like other classification rules under s. **766.61**, it may have unanticipated results. The use of a written consent is one means of avoiding such results.

Consideration was given to defining "underwriting" for purposes of this subsection, but no appropriate definition suggested itself. The term, however, has an accepted meaning within the insurance industry.

[Subsection (3)(c)2] Provides time-apportionment rules for determining the marital property component of: (1) a life insurance policy issued after the determination date which designates the insured as the owner; and (2) a life insurance policy which designates the spouse of the insured as the owner, when at least one of the spouses ceases to be domiciled in the state. The classification rules reflect the express requirement under new s. 766.03 of dual domicile for the continued application of ch. 766.

With the amendment to the definition of "during marriage" by the treatment of s. 766.01(8), the classification rules for determining the marital property component of policies covered under s. **766.61**(3)(b) and (d) reflect the cessation of dual domicile and, therefore, do not require amendment.

[Subsection (7)] Specifies, for simplicity and certainty, the marital property interest, for purposes of an action under s. 766.70(6)(b)3, of a decedent spouse in a life insurance policy which designates the surviving spouse as the owner and insured. Under former law, the application of the valuation rule under s. 766.70(6)(b)2 was uncertain. The marital property interest of the noninsured spouse which is specified in this subsection is a dollar amount equal to one-half of the value of the marital property component of, in general terms, the "cash value" of the policy plus the unused portion of the term premium. This is the only interest of the noninsured spouse in the policy if the option of the surviving spouse under s. 766.70(7) to purchase the policy is not exercised.

[Subsection (8)] Clarifies that the classification of the ownership interest and proceeds of a life insurance policy insuring the life of a spouse which is held by a deferred employment benefit plan is determined under s. 766.62, relating to deferred employment benefits. Questions had been raised concerning the possible application of s. **766.61** to life insurance policies held by a deferred employment benefit plan.

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WEST'S WISCONSIN STATUTES ANNOTATED
MARRIAGE AND FAMILY
CHAPTER 766. PROPERTY RIGHTS OF MARRIED PERSONS; MARITAL PROPERTY

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766.70. Remedies

(1) A spouse has a claim against the other spouse for breach of the duty of good faith imposed by s. 766.15 resulting in damage to the claimant spouse's property. Except as otherwise provided in sub. (6), no spouse may commence an action under this subsection later than 6 years after acquiring actual knowledge of the facts giving rise to the claim.

(2) Upon request of a spouse, a court may order an accounting of the spouses' property and obligations and may determine rights of ownership in, beneficial enjoyment of or access to marital property and the classification of all property of the spouses.

(3) Upon request of a spouse, a court may order the name of the spouse added to marital property or to a document evidencing ownership of marital property held in the name of the other spouse alone except with respect to any of the following:

(a) An interest in a partnership or joint venture held by the other spouse as a general partner or as a participant.

(aL) An interest in a limited liability company held by the

other spouse as a member.

(b) An interest in a professional corporation, professional association or similar entity held by the other spouse as a stockholder or member.

(c) An asset of an unincorporated business if the other spouse is the only one of the spouses involved in operating or managing the business.

(d) A corporation, the stock of which is not publicly traded. Under this paragraph, stock of a corporation is publicly traded if both of the following apply:

1. The stock is traded on a national stock exchange or quoted on the national association of securities dealers automated quotations system.

2. The employees, officers and directors of the corporation own,. in the aggregate, less than 10% in value of the outstanding shares of the stock in the corporation.

(e) Any other property if the addition would adversely affect the rights of a 3rd person.

(4)(a) If marital property has been or is likely to be substantially injured by the other spouse's gross mismanagement, waste or absence, upon request of a spouse a court may order any of the following:

1. A temporary or permanent limitation or termination of any of the other spouse's management and control rights in marital property.

2. A change in classification of marital property.

3. A division of the obligations of the spouses existing on the date of the request, after considering the classification of the obligation under s. 766.55 and the factors specified under ss.

767.255 and 767.26.

4. That all obligations incurred after the court order are the obligations of the incurring spouse and that the other spouse is not liable for, and his or her property is not available to satisfy, the obligations.

5. That any property acquired by either spouse after the court order is the individual property of the acquiring spouse.

(b) The court may make any order under this subsection subject to any equitable condition.

(c) This subsection does not apply to property described in sub. (3)(a), (b), (d) and (e).

(5) When marital property is used to satisfy an obligation other than an obligation under s. 766.55(2)(a) or (b), the nonobligated spouse may request the court to order that he or she receive as individual property marital property equal in value to the marital property used to satisfy the obligations of the obligated spouse, subject to the rights of any 3rd party who relied upon the availability of the marital property to satisfy any obligation under s. 766.55(2)(a) or (b) and subject to equitable considerations. No person may bring an action under this subsection later than one year after the obligation is satisfied.

(6)(a) Except as provided in pars. (b) and (c), if a gift of marital property during marriage by a spouse does not comply with s. 766.53, the other spouse may bring an action to recover the property or a compensatory judgment equal to the amount by which the gift exceeded the limit under s. 766.53. The other spouse may bring the action against the donating spouse, the gift recipient or both. The other spouse must commence the action within the earliest of one year after he or she has notice of the gift, one year after a dissolution or on or before the deadline for filing a claim under s. 859.01 after the death of either spouse. If the recovery occurs during marriage, it is

marital property. If the recovery occurs after a dissolution or the death of either spouse, the recovery is limited to 50% of the recovery that would have been available if the recovery had occurred during marriage.

(b) 1. If a transfer of marital property to a 3rd person during marriage by a spouse acting alone becomes a completed gift upon the death of the spouse or if an arrangement during marriage involving marital property by a spouse acting alone is intended to be and becomes a gift to a 3rd person upon the death of the spouse, the surviving spouse may bring an action against the gift recipient to recover one-half of the gift of marital property. The surviving spouse may not commence an action under this paragraph later than one year after the death of the decedent spouse.

2. If the spouse entitled to a remedy under subd. 1 predeceases the donor spouse, no action may be commenced later than one year after the decedent's death. Except as provided in s. 766.61(7), recovery in such an action is the same as if the donor spouse had predeceased the spouse entitled to recover, but is valued at the date of death of the spouse entitled to recover.

(c) 1. If a spouse acting alone makes a gift of marital property to a 3rd person during marriage in the form of a joint tenancy and the spouse and the 3rd person are joint tenants with respect to that property, the other spouse has a right of reimbursement against the donor spouse or the gift recipient or both with respect to that portion of the gift representing the quotient resulting from dividing the number of joint tenants other than the donor spouse by the total number of joint tenants, including the donor spouse. The other spouse must commence the action within the earliest of one year after he or she has notice of the gift, one year after a dissolution or one year after the death of either spouse.

2. If the gift of marital property under subd. 1 remains in the form of a joint tenancy, at the death of the tenant spouse the surviving spouse has a right of reimbursement against the

decedent spouse's estate or the gift recipient or both with respect to one-half of that portion of the joint tenancy representing the quotient resulting from dividing one by the total number of joint tenants immediately before the death of the tenant spouse, valued at the date of death. The surviving spouse may not commence the action later than one year after the death of the decedent spouse. If the spouse entitled to a right of reimbursement under this subdivision predeceases the tenant spouse, the action may not be commenced later than one year after the decedent's death. The portion subject to the right of reimbursement in such an action is the same as if the tenant spouse had predeceased the spouse with the right of reimbursement, but is valued at the date of death of the spouse with the right of reimbursement.

(7) After the date of death within 90 days after the earlier of either the receipt of the inventory listing any life insurance policy or deferred employment benefit plan covered by s. 766.61 or 766.62, or the discovery of the existence of such a policy or plan, the surviving spouse may purchase the decedent's interest in the policy or plan from the decedent's estate at the interest's fair market value at the date of death, if all or part of the policy or plan is included in the decedent spouse's estate.

(8) Except as provided in sub. (6) and ss. 766.55(4m), 766.56(2)(c) and 766.57, no decree issued under this section may adversely affect the interest of a 3rd party.

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